

THE SUTTON LAW FIRM

September 29, 2011

VIA FAX & U.S. MAIL

Commission Chair Ann Ravel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

RE: Compliance Costs

Dear Chair Ravel:

In connection with tomorrow's Interested Persons meeting regarding the various legal and reporting issues raised by the alleged embezzlement of campaign committee funds by political treasurer Kinde Durkee, we respectfully submit a proposal to respond to this type of situation: allow candidates to raise additional funds into a "legal and accounting compliance fund" in order to pay for professional treasurers, attorneys, software, training sessions, compliance staff, etc. The attached op-ed piece which ran in yesterday's Los Angeles Times, outlines some of the reasons why allowing such a separate fund would decrease the incentive for candidates to scrimp on compliance, and would thereby increase public confidence in the system.

One important rationale for allowing separate fundraising for compliance costs which is not mentioned in the op-ed piece is how complicated the rules for running a campaign have become over the last several years. The days of having your spouse or friendly neighbor serve as your treasurer are long gone. The advent of the electronic filing of campaign reports requires candidates to purchase expensive specialized software, and the FPPC – as you know – has enacted new regulations almost every year imposing new regulatory requirements on campaigns, such as maintaining detailed back-up documentation for meals and travel expenses, filing 10-day reports throughout the course of the campaign and additional 24-hour reports closer to an election, etc. Candidates running on the local level face perhaps an even larger dilemma, because local ethics commissions continue to enact rules on top of these FPPC regulations and because contribution limits are typically much lower in local elections.

Thank you for your consideration of our proposal, and feel free to call with any questions regarding how a new FPPC regulation on legal and accounting compliance funds may look.

Sincerely,



James R. Sutton

Attachment
JRS/dfm
#1000.01

Los Angeles Times

OP-ED

WEDNESDAY, SEPTEMBER 28, 2011

Investing in oversight

Jim Sutton
and Brad Hertz

THE RECENT FBI arrest of political treasurer Kinde Durkee raises many questions. She controlled bank accounts for more than 400 federal, state and local political committees, has admitted misappropriating tens or perhaps hundreds of thousands of dollars for years and is now referred to as "the Bernie Madoff of campaign treasurers." How could this happen? And more important, how can it be prevented in the future?

Running a campaign is not just a matter of throwing one's hat in the ring, raising money, producing TV ads and fliers and shaking hands. It is more like a fast-moving, multidimensional and heavily regulated startup business. And it should be run like one.

Though would-be political power brokers probably do not think of themselves as CEOs or CFOs, their committees must register with federal, state and local agencies, comply with restrictions on fundraising and expenditures, deal with employment, contract and intellectual property law issues, negotiate office leases, etc.

Monthly bank account reconciliation, two signatures on checks, specialized accounting software, separation of functions such as receiving and spending funds, petty cash management and computer backup systems — all are basic controls in a business setting but functions that

are often absent from campaigns, which face many other demands on their resources. Just as one would not do an initial public offering of a company without an experienced general counsel and controller, those entering politics are advised to bring on professionals early in the process to help them navigate the maze of regulations and

The Kinde Durkee affair shows that state law should be changed so campaigns can be run like good businesses.

avoid the all-too-frequent pitfalls that can lead to negative press, scare off contributors and get the campaign "off message," as well as trigger fines or even jail time.

Campaign money is a finite resource. Too many campaigns scrimp on compliance costs (Durkee was known as being less expensive than other treasurer firms) and reserve their resources for TV buys, direct mail, phone banks and the like.

How can candidates and committees avoid having to face these difficult resource allocation decisions and stave off the inevitable Monday-morning quarterbacking that accompa-

nies every wrong choice?

As a start, California could follow the federal model and give fundraising for costs its own status. For example, presidential candidates who accept public funds may raise money for a "general election legal and accounting compliance fund" to hire attorneys and professional treasurers, purchase computers and software, send staff to training courses, retain compliance staff, etc. These amounts do not count toward other fundraising limits, so the candidates do not have to choose between spending money on staff to reconcile bank statements or buying yard signs. The current state model of "legal defense funds" (most recently employed by Mayor Antonio Villaraigosa with regard to his failure to report certain gifts) only allows for separate fundraising in response to a lawsuit or enforcement proceeding — after the fact.

The law should allow state and local campaigns to raise additional money for proactive legal and compliance funds, and the state's Fair Political Practices Commission and the Los Angeles City Ethics Commission would be well served by pursuing this approach. More than just a boon for campaign treasurers and attorneys (including the authors), this change would recognize that campaigns face many of the same legal and record-keeping issues as startup businesses, without the wherewithal to handle the demands in an upfront manner.

Perhaps the biggest victims

of the Durkee scandal are not the candidates and PACs who lost so much money and who must figure out how to clean up the mess, but the citizens who placed their trusts in the candidates and PACs, only to see their money misappropriated for other purposes.

The public benefit gained from limiting how much a citizen may contribute to a campaign would not be diminished if an additional \$500 or \$1,000 could be given by the same citizen to pay for the infrastructure needed to protect those funds. Restricting the use of such funds would ensure that they are properly dedicated for compliance costs, and any excess amounts could be refunded to contributors.

Just as we are rewarded with lower car insurance premiums for driving safely, the campaign laws should put a premium on legal compliance, rather than waiting for the otherwise inevitable accident to happen.

The fallout from the latest political scandal is sure to be expensive, time-consuming and frustrating for all, and the more that can be learned from this unfortunate experience to guard against its repetition, the better. Let's give those who want to comply with the law — by employing experts and implementing controls without diminishing their campaign message — a fighting chance.

JIM SUTTON and BRAD HERTZ are attorneys who specialize in political and campaign finance law.